

## SECTION 13

### MISCELLANEOUS

**13-1. Hazard Pay.** Hazard pay is required for duty involving unusual physical hardships, hazards, or working conditions of an unusually severe nature. Hazard pay is considered to be warranted if the following conditions exist:

a. The employee must perform duty that is subject to eligible physical hardships or hazards criteria as described in the CEHR-E/CESO-I memorandum regarding supplemental guidance on hazard pay differentials for civilian work at HTRW sites, dated 9 October 1990. A copy of this document can be found in Appendix F. This guidance specifies that workers required to wear level "A" or level "B" personal protective equipment (PPE) automatically are entitled to hazard pay. Workers who wear level "C" PPE require an assessment by the district SOHO of the hazards and the procedures to mitigate the hazard. If this review assessment concludes that adequate controls are provided so that the degree of risk to the worker is "practically eliminated," no hazard pay is authorized.

b. The duty must not affect the grade of the Federal wage system position or the classification of the position. The USACE human resources office will be responsible for determining whether the hazardous work constitutes an element in determining the grade of the position.

**13-2. Liability Concerns.**

a. Personal Liability. The Office of Counsel should be contacted immediately in all instances where a USACE employee becomes aware of, or has reason to suspect, a violation of CERCLA, RCRA, or any other law has occurred. The Office of Counsel will provide guidance to USACE employees regarding the availability of legal representation from the Department of Justice (DOJ) relating to any such violation. The DOJ is responsible for determining whether Federal employee requests for government legal representation will be approved in such matters.

b. CERCLA. Substantial civil and criminal penalties are authorized by CERCLA. Two categories of administrative civil penalties are authorized. One category (Class I) provides for penalties of up to \$25,000 per violation. The second category (Class II) provides for penalties of up to \$25,000 per day for each violation, which may be increased to \$75,000 per day for a second or subsequent violation. These administrative penalties relate, among other things, to failure to provide notice of a reportable quantity release of a hazardous substance, or destruction or alteration of records required to be maintained by CERCLA. Moreover, upon conviction for

knowing failure to report a hazardous substance release, or for destruction or alteration of records required by CERCLA under section 103, criminal penalties under the Federal Criminal Code and imprisonment of up to 3 years (5 years for subsequent convictions) can also be imposed.

c. RCRA. Civil and criminal penalties may also be imposed under RCRA. Stiff criminal enforcement provisions providing for substantial penalties (\$50,000 per day) and multi-year imprisonment terms (2 to 5 years) are possible for knowing violation of RCRA's transport, treatment, storage, disposal, export, reporting, or record requirements associated with hazardous waste. The Conference Report on the 1980 RCRA Amendments indicated congressional intent that these criminal provisions not be aimed at punishing minor or technical variations from permit regulations or conditions if the facility operator is acting responsibly. However, where a violation is committed by a person with knowledge that such action will place another person in imminent danger of death or serious bodily injury, RCRA provides for fines of not more than \$250,000, or imprisonment for not more than 15 years, or both. Civil penalties assessed through the use of administrative compliance orders are also permitted by RCRA. Violation of a compliance order may result in civil penalties of up to \$25,000 per day for non-compliance, and suspension or revocation of any permits issued to the violator. Moreover, under RCRA's citizen suit provision, any person may bring a lawsuit on his or her behalf against any other person including the U.S. based on allegations of violation of any permit, standard, regulation, condition, requirement, or order under RCRA. RCRA specifically provides that agents, employees and officers of the U.S. shall not be personally liable for any civil penalty under Federal, state, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of their official duties; but, notes that such agent, employee, and officer is subject to criminal sanctions under Federal or state solid or hazardous waste law, including but not limited to fines and imprisonment.

### **13-3. Community Relations.**

a. General. Community relations play a critical role at most HTRW sites. Every site has the potential for public concern about government actions and sensationalism by special interest groups, individuals, and the news media. When construction work starts, the level of public concern and media interest may rise. The level of sensitivity and public interest is not always related to the technical complexity of the problems at the site. Community opposition to government plans has led to delays, work stoppage, cost overruns, and the obstruction of technically sound remedies.

b. Public Affairs. The Public Affairs Office (PAO) from the RE's district, the local military installation, or the EPA regional office is a key player in the cleanup effort. The staff members from these offices are trained to effectively work with the public and media and can be of great assistance to the RE's staff. The PAO should be involved at the earliest time, including

pre-construction conference and partnering workshops, to aid in the preparation of community relation's plans and the assignment of responsibility for responding to queries from the media and general public. Community relation's plans are recommended for every site, but are required by CERCLA for all sites on or being considered for inclusion on the NPL. The more complex the site, the more comprehensive the plan. A site in the middle of a military installation which has never attracted concern by the public may require very little community relations effort. A FUDS project on which an elementary school has been built may require a substantial effort. The public affairs staff can also support the RE in a variety of other ways. These include:

- (1) preparing, staffing, and distributing news releases, fact sheets, project updates, and other pertinent materials for the information repository;
- (2) assisting in planning, scheduling, arranging, and conducting public meetings;
- (3) assisting with tours of the site when appropriate; and
- (4) planning, developing, and conducting workshops about environmental activities, characteristics and concerns.

c. RE Responsibilities. As a general rule, the EPA is responsible for community relations at Superfund sites. The local military public affairs office is responsible for IRP sites, and the USACE district public affairs office for FUDS and FUSRAP projects. Queries from the media and public should be directed to the appropriate public affairs office for response. However, RE's may find themselves in the position of being the only USACE representative available when members of the media or public come calling. Procedures for dealing with this must be coordinated during the early planning stages of the project. These procedures should address the day-to-day contact with the public and private property owners and should be clearly and concisely addressed with the RPM. Every attempt should be made for the RE to be responsible for the daily contact with the public for the coordination of the RA work. Special emphasis must be given to ensure that in dealing with sites where PRP negotiations are underway, under the auspices of another PRP negotiation district, no actions are taken or comments are made by the executing district which might be detrimental to the successful resolution of the PRP negotiations. When it falls to the RE to respond, listen to the question and answer it:

- (1) Honestly: Tell the truth. If you don't know the answer, say so. Talk only about what you know. Don't speculate;
- (2) Ethically: Don't play games with a reporter or a member of the public. Don't withhold significant information just because the person failed to ask exactly the right question;

(3) Accurately: Don't speculate or guess. If you don't know the answer, try to find it and then get back to the questioner; and

(4) Responsibly: This means answering the question or explaining why the question cannot be answered. Don't be evasive.

d. Community Relations Plan (CRP). See Appendix F for an example copy of a CRP.

#### **13-4. USACE HTRW Lessons Learned System.**

a. Introduction. The HTRW CX is the home for the nationwide USACE HTRW & Environmental Lessons Learned System. The CX was mandated by HQUSACE to develop and maintain the official HTRW Lessons Learned System for the USACE. The original HTRW Lessons Learned System, developed in the early 1990s, was revamped in 1997 and changed to the HTRW & Environmental Lessons Learned Informational System. The purpose of this system is to ensure that USACE employees involved in HTRW and environmental programs such as compliance, pollution prevention and conservation are provided with the tools to enable them to document and share problems, solutions, and experience gained while performing their job related duties, improve efficiency, and enhance the cost effectiveness of USACE processes and operations.

b. Accessing the System. This system serves as a central repository for HTRW and environmental lessons learned. Individuals having access to the world wide web can access the system through the following address:

<http://hq.environmental.usace.army.mil/tools/lessons/lessons.html>

This address takes you to the USACE Environmental Division home page. From there click on "Initiatives," then "Environmental Lessons Learned Program." This screen is the home page for the HTRW & Environmental Lessons Learned Program.

c. Browsing the Web Site. Once linked to the system, individuals will have the capability to search and retrieve information, submit a lessons learned, view the lessons learned data base, link to other lessons learned systems/servers, view standard operating procedures for the system or browse the USACE organization. Individuals can also browse other news events or hot topics in the environmental arena. This site is accessible to all individuals having access to the world wide web.

d. Lessons Learned Submittals. The process of submitting lessons learned is relatively simple, and can be accomplished via the world wide web, e-mail, fax, or regular mail. If you are using the Internet, once at the appropriate address, go to the "Submitting a Lessons Learned" icon

and complete the required data in the template. Next, click on the “submit” window to review your data. If correct, click on “submit” again. Your completed submittal will then be forwarded to the program manager at the CX. Individuals who do not have access to the world wide web may e-mail, fax or mail the information to the program manager at the HTRW CX. The e-mail address is: claudia.d.wiethop@usace.army.mil. The fax number is (402) 697-2639. The mailing address is U.S. Army Corps of Engineers, HTRW CX, ATTN: CENWO-HX-T (Lessons Learned PM), 12565 West Center Road, Omaha, NE 68144.

e. Lessons Learned Review Process. All lessons learned submittals are reviewed by subject matter experts at the HTRW CX, and are also reviewed and validated by HQUSACE personnel prior to dissemination on the system. The system program manager is assigned to the Environmental, Cost and Compliance Branch at the CX, and is the point of contact for the system.

### **13-5. Where to Find the Environmental Regulations.**

<u>Environmental Act</u>	<u>Code of Federal Regulations</u>
Nuclear Regulatory Commission (NRC)	10 CFR Parts 1-199
Department of Energy (DOE)	10 CFR Parts 200-1099
Occupational Safety and Health Act (OSHA)	29 CFR Parts 1900-1999
Surface Mining Control and Reclamation Act (SMCRA)	30 CFR Parts 301-999
Department of Defense (DOD)	32 CFR Parts 1-190
Clean Air Act	40 CFR Parts 50-87
Clean Water Act (CWA)	40 CFR Parts 104-140, 401-471
Safe Drinking Water Act (SDWA)	40 CFR Part 150
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)	40 CFR Parts 150-186

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Radiation Protection Programs (Environmental)	40 CFR Parts 190-195
RCRA - Solid Waste	40 CFR Parts 240-259
Resource Conservation and Recovery Act (RCRA) - Hazardous Waste	40 CFR Parts 260-279
Underground Storage Tanks (USTs)	40 CFR Parts 280-282
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Superfund Amendments and Reauthorization Act (SARA)	40 CFR Parts 300-372
Emergency Planning, Community Right-To-Know Act (EPCRA)	40 CFR Parts 355-374
Toxic Substances Control Act (TSCA)	40 CFR Parts 700-799
National Environmental Policy Act (NEPA)	40 CFR Parts 1500-1508
Hazardous Materials Transportation Act (HMTA)	49 CFR Parts 100-180